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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,473	03/23/2001	Clower E. Maloy	PHLV0360-002	6517
26948	7590	03/08/2005	EXAMINER	
ELLIS & VENABLE, PC 101 NORTH FIRST AVE. SUITE 1875 PHOENIX, AZ 85003			SLITERIS, JOSELYNN Y	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/815,473	MALOY, CLOWER E.
	Examiner	Art Unit
	Joselynn Y. Sliteris	3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 November 2004.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 3 is/are rejected.  
 7) Claim(s) 2 and 4 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 8/5/03 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                             |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|                                                                                                                        | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Acknowledgement***

1. Examiner notes that Applicant's amendments to the claims and specification have been entered on 11/26/04.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over van der Burgt et al. (U.S. Patent 3,784,219), cited by applicant.

4. Regarding claim 1, van der Burgt disclose in Fig. 2 a split-frame system comprising:

- A. a front frame 2 having a rear end;
- B. a rear frame 11 having a front end;
- C. said rear end of said front frame 2 is coupled directly to said front end of said rear frame 11;
- D. a front axle 8 transversely mounted to said front frame 2, said front axle 8 mounting a plurality of wheels thereon;
- E. a rear axle 6 transversely mounted to said rear frame 11, said rear axle 6 mounting a plurality of wheels thereon; and

F. the front end of the rear frame pivotally mounting to the rear end of said front frame.

van der Burgt does not disclose a fifth wheel mounted to said rear frame in Fig. 2. However, van der Burgt does disclose a fifth wheel 12 mounted to a rear frame 11 in Fig. 1, the fifth wheel 12 coupling the trailer 13 to the rear frame 11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the rear frame in Fig. 2 of van der Burgt with the fifth wheel in Fig. 1 of van der Burgt, in order to be able to couple and decouple trailers of various sizes to the rear frame allowing for greater flexibility and versatility in use.

5. Regarding claim 3, van der Burgt discloses in Fig. 2 a split-frame system whereby the rear frame 11 may pivot about a transverse axis of said rear frame relative to said front frame.

#### ***Allowable Subject Matter***

6. Claims 2 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

7. Applicant's arguments filed 11/26/04 have been fully considered but they are not persuasive.

8. In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

9. In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. It is not necessary that the references suggest, expressly in so many words, the changes or improvements that applicant has made. The test for combining references is what the references taken as a whole would have suggested to one of ordinary skill in the art. In re Scheckler, 168 USPQ 716 (CCPA 1971); In re McLaughlin, 170 USPQ 209 (CCPA 1971); In re Young 159 USPQ 725 (CCPA 1968). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA 1969). Examiner further notes that the motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in

some cases the nature of the problem to be solved. See *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). In this case, it would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the fifth wheel 12 from Fig. 1 of van der Burgt on the rear frame in Fig. 2 of van der Burgt in order to be able to couple and decouple trailers of various sizes and capacities to the rear frame allowing for greater flexibility and versatility in use.

10. In response to Applicant's argument that van der Burgt et al. does not include certain features of Applicant's invention, the limitations on which the Applicant relies (i.e. a split-frame system for a motor vehicle transporting a trailer that minimizes the transmission of the trailer's vertical and rotational vibrations to the truck cab) are not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable.

11. In response to Applicant's argument that van der Burgt et al. does not include certain features of Applicant's invention, the limitations on which the Applicant relies (i.e. a hydraulic damping system or device) are not stated in claim 1. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable.

12. In response to Applicant's argument that van der Burgt et al. reference is non-analogous prior art to Applicant's present invention, examiner notes that they are indeed analogous because both the van der Burgt reference and the present invention disclose a split-frame system for a motor vehicle transporting a load. Further, the combined embodiments of Figs. 1 & 2 of the van der Burgt reference discloses all the claimed

limitations of applicant's claims 1 & 3. Examiner also notes that applicant continues to argue that the van der Burgt reference does not include certain features of Applicant's invention, but the limitations on which the Applicant relies are not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joselynn Y. Sliteris whose telephone number is 703-308-8225. The examiner can normally be reached on Mon, Thurs & Fri 8:30 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joselynn Y. Sliteris 3/2/05  
Patent Examiner  
Art Unit 3616

JYS  
3/2/05

  
PAUL N. DICKSON 3/4/05  
SUPERVISORY PATENT EXAMINER  
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